



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-OLEM-2018-0533; FRL-9995-82-OLEM]

Georgia: Approval of State Coal Combustion Residuals Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of availability; request for comment.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or the Act), the Environmental Protection Agency (EPA) is proposing to partially approve the Georgia Coal Combustion Residuals (CCR) state permit program. After reviewing the state permit program application, submitted by the Georgia Environmental Protection Division (GA EPD), EPA has preliminarily determined that Georgia's CCR state permit program meets the standard for partial approval under RCRA. If approved, Georgia's CCR state permit program will operate in lieu of the Federal CCR program, with the exception of certain provisions noted below. The State's CCR state permit program requirements and resulting permit provisions will also be subject to EPA's information gathering and enforcement authorities under RCRA and other applicable statutory and regulatory provisions as discussed below. This document announces that EPA is seeking comment on this proposal during a 60-day public comment period and will be holding a public hearing on EPA's preliminary approval of Georgia's CCR state permitting program.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Public Hearing:* A public hearing will be held on August 6, 2019, 8 am to 5:30pm.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2018-0533. All documents in the docket are listed in the <https://www.regulations.gov> index. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742. You may send comments, identified by Docket ID No. EPA-HQ-2018-0533, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- U.S. Environmental Protection Agency, EPA Docket Center, Docket No. EPA-HQ-OLEM-2018-0533, Mail Code 28221T, 1200 Pennsylvania Ave. N.W., Washington, DC 20460.
- Hand Delivery / Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

The public hearing will be held at GA EPD Tradeport Training Room located at 4244 International Parkway, Suite 116, Atlanta, GA 30354-3906. The hearing will convene at 8:00

a.m. local time and conclude at 5:30p.m. (local time). For additional information on the public hearing see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Michelle Long, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (703) 347-8943; e-mail address: Long.Michelle@epa.gov. For more information on this announcement please visit <https://www.epa.gov/coalash>.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means the U.S. EPA.

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2018-0533, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the ADDRESSES section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general

guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

B. Public Hearing

EPA will hold the public hearing at the GA EPD Tradeport Training Room located at 4244 International Parkway, Suite 116, Atlanta, GA 30354-3906, on August 6, 2019, from 8 a.m. through 5:30 p.m. EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the hearing, please use the online registration form available at <https://www.epa.gov/coalash/forms/public-hearing-georgias-coal-combustion-residuals-permit-program>. The last day to pre-register to speak at the hearing will be July 31, 2019. On August 2, 2019, the EPA will post a general agenda for the hearing at <https://www.epa.gov/coalash/forms/public-hearing-georgias-coal-combustion-residuals-permit-program>.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have five (5) minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form. If EPA is anticipating a high attendance, the time allotment per testimony may be shortened to no shorter than three (3) minutes in order to accommodate all those wishing to provide testimony who have pre-registered. While EPA will make every effort to accommodate all speakers who arrive and register the day of the hearing, opportunities to

speakers may be limited based upon the number of preregistered speakers. Therefore, EPA strongly encourages anyone wishing to speak to preregister.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/coalash/forms/public-hearing-georgias-coal-combustion-residuals-permit-program>. While the EPA expects the hearing to go forward as set forth above, please monitor our website to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the service of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by July 30, 2019. We will not be able to arrange accommodations without advanced notice.

II. General Information

A. Overview of Proposed Action

EPA is proposing to approve Georgia's CCR state permit program, in part, pursuant to RCRA 4005(d)(1)(B). 42 U.S.C. 6945(d)(1)(B). The fact that Georgia is seeking a partial program approval does not mean it must subsequently apply for a full program approval. However, Georgia could apply for a revised partial program approval or a full program approval at some point in the future if it chooses to do so. If approved, Georgia's CCR state permit program would operate in lieu of the Federal CCR program, codified at 40 CFR part 257, subpart

D¹, with the exception of the provisions specifically identified below for which the state is not seeking approval. However, even for the approved provisions, EPA would retain its inspection and enforcement authorities under RCRA sections 3007 and 3008, 42 U.S.C. 6927 and 6928. *See* 42 U.S.C. 6945(d)(4)(B).

There are no federally recognized tribes within the State of Georgia, nor any federally recognized tribal lands/reservations adjacent to Georgia's boundaries with neighboring states. Thus, EPA has not consulted with any Federal tribes in connection with this proposed Action.

B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous, subbituminous, and lignite, for the purpose of generating steam to power a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR, commonly known as coal ash, include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR can be sent offsite for disposal, or beneficial use, or disposed in on-site landfills or surface impoundments.

On April 17, 2015, EPA published a final rule, creating 40 CFR part 257, subpart D, that established a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302, April 17, 2015) ("Federal CCR regulations"). The rule created a self-implementing program which regulates the location, design, operating criteria, and groundwater monitoring and corrective action for CCR disposal, as well as the closure and post-closure care of CCR units. It also requires recordkeeping and notifications for CCR units. The Federal CCR regulations do not apply to activities that meet the definition of "beneficial use" of CCR, as that term is defined in § 257.53.

¹ Unless otherwise specified, all references to part 257 and part 239 in this document are to title 40 of the Code of Federal Regulations (CFR).

C. Statutory Authority

EPA is issuing this proposed action pursuant to sections 4005(d) and 7004(b)(1) of RCRA. *See* 42 U.S.C. 6945(d) and 6974(b)(1). Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act amended section 4005 of RCRA, creating a new subsection (d) that establishes a Federal permitting program similar to those under RCRA subtitle C and other environmental statutes. *See* 42 U.S.C. 6945(d). Under the WIIN Act, states may develop and submit an application for a state CCR permit program to EPA for approval.

Under RCRA section 4005(d)(1)(A), 42 U.S.C. 6945(d)(1)(A), states seeking approval must submit to the Administrator “evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State.” EPA shall approve a state permit program if the Administrator determines that the state program meets the standard in RCRA section 4005(d)(1)(B), 42 U.S.C. 6945(d)(1)(B), i.e., that it will require each CCR unit located in the state to achieve compliance with either: (1) the Federal CCR requirements at 40 CFR part 257, subpart D; or (2) other state criteria that the Administrator, after consultation with the state, determines to be “at least as protective as” the Federal requirements. *See* 42 U.S.C. 6945(d)(1)(B). The Administrator must make a final determination, after providing for public notice and an opportunity for public comment, within 180 days of receiving a state’s complete submittal of the information in RCRA section 4005(d)(1)(A). *See* 42 U.S.C. 6945(d)(1)(B). EPA may approve a CCR state permit program in whole or in part. *Id.* Once approved, the state permit program operates in lieu of the Federal requirements. *See* 42 U.S.C. 6945(d)(1)(A). In a state with partial approval, only the state requirements that have been approved operate in lieu of the Federal requirements, and facilities remain responsible for compliance with all remaining requirements in 40 CFR part 257.

Once a program is approved, the Administrator must review the approved CCR state permit program at least once every 12 years, as well as no later than three years after a revision to an applicable section of 40 CFR part 257, subpart D, or one year after any unauthorized significant release from a CCR unit located in the state. *See* 42 U.S.C. 6945(d)(1)(D)(i)(I)-(III). EPA also must review an approved program at the request of another state alleging that the soil, groundwater, or surface water of the requesting state is or is likely to be adversely affected by a release from a CCR unit in the approved state. *See* 42 U.S.C. 6945(d)(1)(D)(i)(IV).

In a state with an approved CCR state permit program, EPA may commence administrative or judicial enforcement actions under section 3008 of RCRA, 42 U.S.C. 6928, if the state requests assistance or if EPA determines that an EPA enforcement action is likely to be necessary to ensure that a CCR unit is operating in accordance with the criteria of the state's permit program. *See* 42 U.S.C. 6945(d)(4). EPA may also exercise its inspection and information gathering authorities under section 3007 of RCRA, 42 U.S.C. 6927.

II. Georgia's Application

On April 13, 2018, Georgia EPD submitted its initial CCR State Permit Program application to EPA Region 4. After receiving comments from EPA, Georgia provided revisions to its 2018 application on March 6, 2019 and May 23, 2019. In its February 27, 2019, revised cover letter, Georgia requested partial approval of the State's CCR permit program.² EPA determined that Georgia's State CCR Permit Program Application was complete and notified Georgia of its determination by letter dated June 19, 2019. Georgia's application and EPA's

² The revised narrative application, dated May 22, 2019, shall be substituted for the original narrative, dated March 19, 2018, and the addendum to the part 257 Checklist for CCR Surface Impoundments and CCR Landfills, submitted on March 6, 2019, shall be added to the part 257 Checklist provided with the original submission in the 2018 Application. All other documents submitted as part of the 2018 Application remain unchanged.

completeness determination letter are available in the docket supporting this preliminary determination.

Georgia's CCR Permit Program is codified at Ga. Comp. R. and Regs. 391-3-4-.10, which adopts by reference nearly all of the technical criteria contained in 40 CFR part 257, subpart D.³ Georgia's CCR Rule is included in Appendix C of Georgia's application and is available in the docket supporting this preliminary determination. Georgia's CCR Permit Program covers a broader universe of CCR units than are covered under the Federal CCR regulations. While Georgia's general applicability section mirrors that of the Federal CCR regulations (*See* Ga. Comp. R. and Regs. 391-3-4-.10(1)(a)1. and 40 CFR 257.50(b)), and the State's definition of "CCR Unit" matches the Federal definition (*See* Ga. Comp. R. and Regs. 391-3-4-.01(11) and 40 CFR 257.53), the Georgia CCR regulation defines "CCR Landfills" and "CCR Surface Impoundments" differently. Specifically, the State's definitions for these units include dewatered surface impoundments, National Pollutant Discharge Elimination System (NPDES)-CCR surface impoundments (inactive, but not dewatered, surface impoundments at inactive facilities), and inactive CCR landfills. *See* Ga. Comp. R. and Regs. 391-3-4-.01(9) and (10). These units are, in turn, defined at Ga. Comp. R. and Regs. 391-3-4-.10(2)(a)1.-3. These types of CCR units are not covered by the Federal CCR regulations. *See* 40 CFR 257.50(d) and 257.53. However, by regulating inactive impoundments at inactive facilities, Georgia's CCR Permit Program aligns with the U.S. Court of Appeals decision in *Utility Solid Waste Activities Group, et al. v. EPA*, 901 F.3d 414 (D.C. Cir. 2018), which vacated the exclusion from the Federal regulations for inactive impoundments at inactive facilities. Since there are no Federal regulations for inactive impoundments at inactive facilities, EPA has no Federal criteria to

³ The Georgia CCR Rule adopts 80 FR 21468 (April 17, 2015), as amended at 80 FR 37988 (July 2, 2015) and 81 FR 51807 (August 5, 2016). *See* Ga. Comp. R. and Regs. 391-3-4-.10(1)(c).

compare Georgia's regulations on these units to, which is why Georgia is not seeking approval of that part of the permit program. However, Georgia intends to regulate inactive surface impoundments at inactive facilities as existing CCR units. Georgia's CCR units (existing landfills, active surface impoundments, and inactive surface impoundments at operating power plants) will all be issued new permits under Georgia's CCR regulations. Owners and operators of these units submitted permit applications to Georgia. The permits that will be issued by the state are considered new permits and thus Georgia will follow their public participation procedures for CCR units, detailed on page 14 of the narrative in the Application. Georgia CCR units are issued permits for the life of the site, with a required review (discussed on page 11 of the narrative) every 5 years.

For more information on the specific facilities covered by Georgia's CCR Permit Program, see the Technical Support Document which is available in the docket for this document.⁴

In addition to the technical criteria in Ga. Comp. R. and Regs. 391-3-4-.10, CCR units must comply with the permitting requirements in Ga. Comp. R. and Regs. 391-3-4-.10(9); the procedural permitting requirements in Ga. Comp. R. and Regs. 391-3-4-.02; the financial assurance requirements in Ga. Comp. R. and Regs. 391-3-4-.10(10) and 391-3-4-.13; and the reporting requirements in Ga. Comp. R. and Regs. 391-3-4-.17.

III. EPA Analysis of Georgia's Application

⁴ Georgia's application also includes some discussion of Municipal Solid Waste Landfills (MSWLs), including Commercial Industrial Landfills (CILs), that dispose of CCR. While Georgia permits these facilities through its MSWL regulations, MSWLs disposing of CCR are exempted from the requirements of 40 CFR 257 and are outside the scope of the Federal CCR regulations and the State's CCR Permit Program. Georgia's discussion of these landfills and how it regulates them is included in its application only to provide a more inclusive description of CCR disposal activities in Georgia.

As discussed in Unit I.C. of this document, RCRA section 4005(d) requires EPA to evaluate two components of a state program to determine whether it meets the standard for approval. First, EPA is to evaluate the adequacy of the permit program itself (or other system of prior approval and conditions). *See* 42 U.S.C. 6945(d)(1)(A). Second, EPA is to evaluate the adequacy of the technical criteria that will be included in each permit, to determine whether they are the same as the Federal criteria, or to the extent they differ, whether the modified criteria are “at least as protective as” the Federal requirements. *See* 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. *See* 42 U.S.C. 6945(d)(1).

On that basis, EPA conducted an analysis of Georgia’s State CCR Permit Program Application, including a thorough analysis of Ga. Comp. R. and Regs. 391-3-4-.10 and its adoption by reference of portions of 40 CFR part 257, subpart D. As noted, Georgia has requested partial program approval of its CCR permit program. The Georgia CCR Rule does not adopt by reference 40 CFR 257.52(b), which requires compliance with the protections for Threatened and Endangered Species identified in 40 CFR 257.3-2. Additionally, it adopts by reference portions of the Federal CCR regulations that have since been vacated by the U.S. Court of Appeals in *Utility Solid Waste Activities Group, et al. v. EPA*.⁵ Accordingly, Georgia is not seeking approval for the following:

1. Requirements relevant to Endangered Species in 40 CFR 257.3-2;

⁵ *See Utility Solid Waste Activities Group, et al v EPA*, No. 15-1219 (D.C. Circuit). On August 21, 2018, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded the three provisions of the Federal CCR Rule: 40 CFR 257.101(a), which allowed unlined impoundments to continue receiving coal ash unless they leak; 40 CFR 257.71(a)(1)(i), which classified “clay-lined” impoundments as lined; and 40 CFR 257.50(e), which exempted from regulation inactive impoundments at inactive facilities. Georgia adopts by reference 40 CFR 257.71(a)(1)(i) and 40 CFR 257.101(a) at Ga. Comp. R. and Regs. 391-3-4-.10(c), two of the three provisions that were vacated.

2. The exclusion of inactive impoundments at inactive facilities at 40 CFR 257.50(e), but which has now been vacated;
3. 40 CFR 257.101(a), which allows unlined impoundments to continue receiving coal ash unless they leak, and which has since been vacated; and
4. 40 CFR 257.71(a)(1)(i), which classifies “clay-lined” impoundments as lined, which has since been vacated.

Based on this analysis, EPA has preliminarily determined that the portions of Georgia’s CCR state permit program that have been submitted for approval meet the standard in section 4005(d)(1)(A) and (B) of RCRA. Georgia’s CCR permit program includes all the elements of an adequate CCR state permit program as discussed in more detail below. It also contains all the technical criteria in 40 CFR part 257, except for the provisions specifically discussed below. Consequently, EPA is proposing to approve Georgia’s permit program “in part.” 42 USC 6945(d)(1)(B). EPA’s analysis and findings are discussed in greater detail below and in the Technical Support Document, which is available in the docket supporting this preliminary determination.

A. Adequacy of Georgia’s Permit Program.

Section 4005(d)(1)(A) of RCRA, 42 U.S.C. 6945(d)(1)(A), requires a state seeking CCR state permit program approval to submit to EPA an application with “evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State;” however, it does not require EPA to promulgate regulations governing the process or standard for determining the adequacy of such state programs. EPA, therefore, developed the *Coal Combustion Residuals State Permit Program Guidance Document; Interim Final* (82 FR 38685, August 15, 2017) (the

“Guidance Document”). The Guidance Document provides guidance on a process and standards that states may choose to use to apply for EPA approval of their CCR permit programs, based on the existing regulations at 40 CFR part 239 and the Agency’s experience in reviewing and approving state programs in general. EPA evaluated the adequacy of Georgia’s CCR state permit program using the process and statutory and regulatory standards discussed in the Guidance Document. EPA’s findings are summarized below and provided in more detail in the Technical Support Document located in the docket supporting this preliminary determination.

1. Public Participation

Based on section 7004 of RCRA, 42 U.S.C. 6974, and the part 239 regulations, it is EPA’s judgment that an adequate state CCR permitting program will ensure that: (1) documents for permit determinations are made available for public review and comment; (2) final determinations on permit applications are made known to the public; and (3) public comments on permit determinations are considered. To meet these requirements, Georgia has adopted a policy governing the procedure for public comment on draft CCR permits, which is memorialized in its “CCR Draft Permit Public Comment Process” Memorandum, signed by the Director of Georgia EPD on April 13, 2018. This procedure requires that Georgia EPD post all draft CCR permits online and concurrently notify anyone who has signed up to receive email for coal ash-related announcements of the posting. Draft permits and all information submitted as part of CCR permit applications will be available for review in person at Georgia EPD’s Tradeport office. Draft permits will be available for public comment for 30 days, and the Director may extend this comment period if deemed necessary. Georgia EPD will accept comments via email or regular mail. After the comment period ends, Georgia EPD will review all comments received and make any necessary changes before making a final permit decision. When issuing a final permit,

Georgia EPD will release a response to comments on the draft permit and will notify the public in the same manner as when it provided notice of the draft permit. The final permit and response to comments will be available for review online. The “CCR Draft Permit Public Comment Process” Memorandum, a sample transmittal letter to the CCR facility owner, and a sample “Notice of the Opportunity for Public Comment” are included in Appendix D to the 2018 Application and is available in the docket supporting this preliminary determination. EPA has preliminarily determined that this approach provides adequate opportunities for public participation in the permitting process sufficient to meet the standard for program approval.

2. Guidelines for Compliance Monitoring Authority

Based on the 40 CFR part 239 regulations, it is EPA’s judgment that an adequate CCR state permit program should provide the state with the authority to gather information about compliance, perform inspections, and ensure that information it gathers is suitable for enforcement. Georgia EPD has compliance monitoring authority under O.C.G.A. §§ 12-8-23.1(a)(4), 12-8-29.1, and 12-8-23.1(20). Specifically, O.C.G.A. § 12-8-23.1(a)(4) and O.C.G.A. § 12-8-29.1 give the Director of Georgia EPD authority to undertake investigations, analysis, and inspections to determine compliance, and to enter property to undertake investigations to verify compliance. Further, O.C.G.A. § 12-8-23.1(20) grants the Director of Georgia EPD the authority to exercise all incidental powers necessary to carry out the purposes of applicable state law. Together these authorities provide the State with authority to obtain records from an owner or operator to determine compliance. EPA has preliminarily determined that these compliance monitoring authorities are adequate, and that this aspect of the State’s CCR state permit program meets the standard for program approval.

3. Guidelines for Enforcement Authority

Based on the 40 CFR part 239 regulations, it is EPA's judgment that an adequate CCR state permit program should provide the state with adequate enforcement authority to administer its CCR state permit program, including the authority to: (1) restrain any person from engaging in activity which may damage human health or the environment, (2) sue to enjoin prohibited activity, and (3) sue to recover civil penalties for prohibited activity. Georgia EPD has adequate enforcement authority for its existing programs under O.C.G.A. sections 12-8-23.1(a)(9), 12-8-30, 12-8-30.1, 12-8-30.4, and 12-8-30.6, and these authorities extend to Georgia's CCR state permit program. For example, O.C.G.A. section 12-8-23.1(a)(9) provides the State with authority to bring an administrative or civil proceeding to enforce the Georgia Comprehensive Solid Waste Management Act and its implementing regulations. O.C.G.A. section 12-8-30 provides the State with the authority to issue orders requiring corrective action to remedy violations. Under O.C.G.A. section 12-8-30.4, the State may sue in superior court for injunctions, restraining orders, and other relief for activities that violate the State program. Finally, under O.C.G.A. section 12-8-30.6, the State has the authority to bring an administrative action to assess civil penalties for violations of the State's program. EPA has preliminarily determined that this aspect of Georgia's CCR state permit program meets the standard for program approval.

4. Intervention in Civil Enforcement Proceedings

Based on section 7004 of RCRA and the 40 CFR part 239 regulations, it is EPA's judgment that an adequate CCR state permit program should provide adequate opportunity for citizen intervention in civil enforcement proceedings. Specifically, the state must either: a) provide for citizen intervention as a matter of right or b) have in place a process to (1) provide notice and opportunity for public involvement in civil enforcement actions, (2) investigate and provide responses to citizen complaints about violations, and (3) not oppose citizen intervention

when permissive intervention is allowed by statute, rule, or regulation. In Georgia, citizen intervention is possible in the State civil enforcement process as a matter of right for interested parties. Pursuant to O.C.G.A. section 12-8-30.2, all hearings/reviews of enforcement actions on orders shall be conducted in accordance with O.C.G.A. section 12-2-2, which provides that hearings shall be conducted in accordance with the Georgia Administrative Procedures Act, which provides for intervention by citizens in contested cases. *See* O.C.G.A. section 50-13-14. EPA has preliminarily determined that these authorities provide for an adequate level of citizen involvement in the enforcement process, and that this aspect of the State's CCR state permit program meets the standard for program approval.

B. Adequacy of Technical Criteria.

EPA has preliminarily determined that the portions of Georgia's CCR permit program that were submitted for approval meet the standard for approval under RCRA section 4005(d)(1)(B)(i), 42 U.S.C. 6945(d)(1)(B)(i). To make this preliminary determination, EPA compared the technical requirements in Georgia's CCR regulations to 40 CFR part 257 to determine whether they differed from the Federal requirements, and if so, whether those differences met the standard in RCRA sections 4005(d)(1)(B)(ii) and (C), 42 U.S.C. 6945(d)(1)(B)(ii) and (C). Georgia's CCR regulations are contained in Ga. Comp. R. and Regs. 391-3-4-.10, where Georgia adopts by reference portions of 40 CFR part 257, subpart D, and also spells out certain provisions. Specifically, in addition to what is required by 40 CFR part 257, the Georgia CCR regulations contain additional state-specific requirements for new and lateral expansions of CCR landfills in Ga. Comp. R. and Regs. 391-3-4-.10(3)(c)-(e); operating criteria in Ga. Comp. R. and Regs. 391-3-4-.10(5)(c); groundwater monitoring and corrective action in Ga. Comp. R. and Regs. 391-3-4-.10(6)(b)-(g); closure and post-closure care in Ga.

Comp. R. and Regs. 391-3-4-.10(7)(c)-(g); and recordkeeping, notification, and posting of information to the Internet in Ga. Comp. R. and Regs. 391-3-4-.10(8)(a)1.

The following table sets forth the Georgia regulations that encompass the technical criteria of the State's CCR Permit Program.

Table 1: Comparison of Federal and Georgia's Proposed CCR Permit Program Requirements

Description	State Citation/Analog	Federal Requirement
Scope and Purpose	Ga. Comp. R. and Regs. 391-3-4-.10(1)(a) and (b)	§ 257.50
Effect of other regulations	Ga. Comp. R. and Regs. 391-3-4-.04(11)	§ 257.52 (a)
	Ga. Comp. R. and Regs. 391-3-4-.05(1)(d) and 391-3-4-10(9)(c)1.(ii)	§ 257.52 (b) (cross-referencing § 257.3-1 (Floodplains))
	No State Analog	§ 257.52 (b) (cross-referencing § 257.3-2 (Endangered Species))
	Ga. Comp. R. and Regs. 391-3-4-.10(5)(a) and 391-3-4-.04(1)	§ 257.52 (b) (cross-referencing § 257.3-3 Surface Water)
Definitions	Ga. Comp. R. and Regs. 391-3-4-.10(2)(a) and 391-3-4-.01.	§ 257.53
Location Restrictions	Ga. Comp. R. and Regs. 391-3-4-.10(1)(c) and 391-3-4-.10(3)	§§ 257.60 through 257.64
Design Criteria	Ga. Comp. R. and Regs. 391-3-4-.10(1)(c) and 391-3-4-.10(4)	§§ 257.70 through 257.74
Operating Criteria	Ga. Comp. R. and Regs. 391-3-4-.10(1)(c) and 391-3-4-.10(5)	§§ 257.80 through 257.84
Groundwater Monitoring and Correction Action	Ga. Comp. R. and Regs. 391-3-4-.10(1)(c) and 391-3-4-.10(6)	§§ 257.90 through 257.98
Closure and Post-Closure Care	Ga. Comp. R. and Regs. 391-3-4-.10(1)(c) and 391-3-4-.10(7)	§§ 257.100 through 257.104
Record Keeping, Notification, and Posting of Information to the Internet	Ga. Comp. R. and Regs. 391-3-4-.10(1)(c) and 391-3-4-.10(8)	§§ 257.105 through 257.107
Constituents for Detection	Ga. Comp. R. and Regs. 391-3-4-.10(6)(b)	Appendix III to part 257

Monitoring		
Constituents for Assessment Monitoring	Ga. Comp. R. and Regs. 391-3-4-.10(6)(b)	Appendix IV to part 257

As noted above, the Georgia CCR regulations do not adopt by reference § 257.52(b), which requires compliance with the protections for Threatened and Endangered species identified in § 257.3-2, and do not otherwise contain provisions with equivalent protections for Threatened and Endangered species. For this reason, and because the Georgia CCR regulations adopt by reference portions of 40 CFR part 257 that have since been vacated,⁶ EPA is proposing to partially approve Georgia’s CCR permit program. Specifically, EPA is proposing to approve all of Georgia’s program except for the following four provisions:

1. Requirements relevant to Threatened and Endangered species at 40 CFR 257.3-2;
2. The exclusion of inactive impoundments at inactive facilities at 40 CFR 257.50(e);
3. 40 CFR 257.101(a), which allows unlined impoundments to continue receiving coal ash unless they leak; and
4. 40 CFR 257.71(a)(1)(i), which classifies “clay-lined” impoundments as lined.

With the exception of the four provisions noted above, the Georgia CCR regulations contain all of the technical elements of the Federal CCR regulations, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and publicly accessible website posting requirements. The Georgia CCR permit program also contains State-specific language, references, definitions, and State-specific requirements that differ from the Federal CCR regulations, but which EPA has determined to be “at least as protective as” the Federal

⁶ Georgia adopts by reference §§ 257.71(a)(1)(i) and 257.101(a) at Ga. Comp. R. and Regs. 391-3-4-.10(c).

criteria. The effect of granting a partial approval with respect to the four provisions above is that facilities will remain responsible for compliance with the Federal requirements for Threatened and Endangered species in 40 CFR 257.3-2. Facilities must also comply with the Federal requirements for inactive impoundments at inactive facilities, unlined impoundments, and clay-lined impoundments, once established by EPA. However, as previously noted, the Georgia CCR Permit Program already regulates inactive impoundments at inactive facilities. Further, any future regulations with respect to unlined impoundments and clay-lined impoundments are not expected to have any practical impact in Georgia because all unlined impoundments in the State are scheduled to cease receiving CCR by 2020 (i.e., no unlined impoundments will continue to receive CCR after that date) and because no clay-lined impoundments exist in Georgia.

EPA's full analysis of Georgia's CCR permit program, and how Georgia's regulations differ from the Federal requirements, can be found in the Technical Support Document located in the docket supporting this preliminary determination.

IV. Proposed Action

EPA has preliminarily determined that Georgia's CCR permit program meets the statutory standard for partial approval. Accordingly, in accordance with 42 U.S.C. 6945(d), EPA is proposing to partially approve Georgia's CCR permit program.

Dated: June 21, 2019.

Andrew R. Wheeler,
Administrator.

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